

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-AT-322
)	
Barinowski Investment Company, LP)	NAL/Acct. No.200232480030
Owner of Antenna Structure #1062662 near)	
Savannah, Georgia)	FRN 0006-1664-09
Augusta, Georgia)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 30, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Barinowski Investment Company, LP (“Barinowski”), owner of antenna structure #1062662, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Commission's Rules (“Rules”).¹ Specifically, we find Barinowski Investment Company, LP apparently liable for failure to clean and repaint its antenna structure to maintain good visibility.

II. BACKGROUND

2. On August 28, 2002, the antenna structure bearing FCC antenna structure registration (“ASR”) number 1062662 and located near Savannah, Georgia was inspected by an agent of the Commission's Atlanta Field Office (“Atlanta Office”). At the time of inspection, black cabling on the outside of all three sides of the structure covered the painted metal tower reducing visibility of the structure. The Commission's ASR database showed this structure is owned and registered to Barinowski.

3. On September 12, 2002, a Barinowski contact person stated during a telephone interview with an agent of the Atlanta Office, that Barinowski owned the antenna structure bearing ASR number 1062662, that personnel were aware of the cabling problem affecting the visibility of this antenna structure, and that they had contracted to have the tower repainted as soon as an additional tenant was added to the structure.

III. DISCUSSION

4. Barinowski's antenna structure registration #1062662 specifies lighting and painting for this structure that includes requirements that the structure be painted with alternating aviation orange and white bands. Section 17.50 of the Rules requires antenna structure owners to clean or repaint the

¹ 47 C.F.R. § 17.50.

structure as necessary to maintain good visibility. On August 28, 2002, Barinowski's antenna structure #1062662 had black cabling on the tower faces obscuring the structure's paint and causing the structure to have an overall dark appearance over the entire length of the structure. As a result of this cabling, the structure was not clearly visible.

5. Barinowski personnel stated that they had begun the process of contracting to have the structure repainted, however, visibility of the structure at the time of inspection was diminished during daylight hours.

6. Based on the evidence before us, we find Barinowski willfully² violated Section 17.50 of the Rules by failing to repaint the antenna structure in accordance with the painting specifications associated with its antenna structure #1062662.

7. Pursuant to Section 1.80(b)(4) of the Rules,³ the base forfeiture amount for failure to repaint this structure is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁴ Considering the entire record and applying the factors listed above, this case warrants a forfeiture of \$10,000.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Barinowski Investment Company, LP is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Rules by failing to clean and repaint its antenna structure to maintain good visibility.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Barinowski Investment Company, LP SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Barinowski Investment Company, LP, 3213 Huxley Drive, Augusta, GA 30909. A copy shall also be sent to Barinowski Investment Company, LP, 2278 Wortham Lane, Grovetown, GA 30813.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office, Enforcement Bureau

⁷ See 47 C.F.R. § 1.1914.